

BEFORE THE DECISION-MAKING COMMITTEE

IN THE MATTER of the Exclusive Economic Zone and
Continental Shelf (Environmental Effects)
Act 2012

AND

IN THE MATTER of an Application for Marine Dumping
Consent by Coastal Resources Limited

**SUMMARY STATEMENT OF CATHERINE CLARKE ON
DRAFT CONDITIONS OF CONSENT**

Dated 4 December 2018

SUMMARY STATEMENT

1. I was engaged by the Environmental Protection Agency (EPA) to prepare an analysis of Conditions Report. My report provided a detailed assessment of the proffered conditions attached to the evidence of Mr Hay for CRL (dated 25 October 2018) and recommended amendments to these conditions. Just to note, I did not assess the merits of the application, rather the appropriateness or otherwise of the 'Proposed Conditions of Consent' in Mr Hay's evidence within the scope of my expertise as a planner.
2. Since the preparation of my Conditions Report, the Planners (Mr Hay for CRL, Mr Riddell for Department of Conservation, and Mr Shearer for Empire Capital and myself), have undertaken expert conferencing, and prepared a Joint Witness Statement ('JWS') which included a further revised set of proposed conditions (dated 27 November 2018) and noted the areas of disagreement.
3. Since the hearing commenced, there has been continued liaison between the parties, regarding these proposed conditions. Last evening, a further revised set of proposed conditions (dated 3 December 2018) was developed by the planners, which has further narrowed the points of disagreement.
4. Table - Proposed Conditions of Consent - Post Expert Conferencing by the Planning Experts (dated 3 December 2018).
5. In my opinion, many of the issues raised and amendments recommended in my Conditions Report, have now been addressed in this latest set of the Proposed Conditions. Therefore, this summary statement briefly comments on the proposed conditions with which I have outstanding concerns or wish to draw to the attention of the Decision Making Committee.
6. Definitions I support the definitions as now proposed. I support in principle, the new definition of an 'appropriately trained crew member' as proposed by Mr Hay and Mr Shearer. However, I would also support the details of this training being more fully described in a Schedule as proposed in the evidence of Mr Riddell. I also support the deletion of the definition of 'ISQG' (the Interim Sediment Quality Guidelines), and the inclusion of the new Schedule 7 (ANSECC (2000) Sediment Quality Guidelines Trigger

Values with updates by Simpson et al, 2013). I consider the inclusion of this new Schedule 7 addresses the concerns raised in paragraphs 49 to 51 of my Conditions Report.

7. Proposed Condition 1 I continue to consider the word 'general' should be deleted from proposed Condition 1 for the reasons set out in paragraph 53 of my Conditions Report. I also note the applicant needs to provide an updated list of the documents to be specifically referenced in proposed Condition 1.
8. Proposed Condition 1A I support in principle the inclusion of proposed Condition 1A specifying the maximum amount of dredged material to be dumped at the NDA per annum, now based on a 2-year rolling average, (as discussed in paragraph 54 of my Conditions Report). The actual 'maximum amount' in proposed Condition 1A is a matter to be determined by the Decision Making Committee.
9. Conditions 7A, 7AA and 7B Condition 7A provides that no dumping of dredged material from a source site can occur, until the EPA has certified the sediment and biosecurity characterisation for a Source Site has occurred in accordance with the methodologies described in proposed Conditions 6 and 7. Mr Hay and Mr Shearer has sought the inclusion of a '20 working day' limit for the EPA to certify or reject this sediment and biosecurity characterisation. I can advise in my discussions with EPA staff, that to date, no concerns have been raised regarding this suggested 20 working day limit. I also support the inclusion of proposed Condition 7AA, which now clearly sets out in a condition, a performance standard for the quality of dredged material at the Source Site that can be dumped at the Northern Disposal Area. Further proposed Condition 7AA provides the opportunity for EPA to undertake enforcement action, should any dredged material to be dumped at the Northern Disposal Area not meet this performance standard (as identified in the sediment characterisation undertaken in accordance with proposed Condition 7). I consider this new condition addresses the concerns raised in paragraph 70 of my Conditions Report. Further I also support proposed Condition 7B, which now requires the Consent Holder to notify the EPA if they become aware of an incident that could result in a change to the sediment and / or biosecurity characterisation at the Source Site.

10. Condition 10 I am continue to support the wording recommended in my Conditions Report which specifies what dredged material is not allowed to be dumped at the Northern Disposal Area (that is, material removed by suction dredging or mixed with water to produce a slurry). However, I would have no concerns if the Decision-Making Committee were of a mind to include additional wording referring to all dredged material also being required to be removed by mechanical excavation.
11. Condition 23 I support the deletion of proposed Condition 23 (ii), ((formerly Condition 24 (ii) in the JWS proposed conditions (dated 27 November 2018)), which referred to the biofouling requirements for vessels. I consider imposing this condition duplicates other MMRs¹ and is unnecessary, provided the Decision Making Committee is satisfied these other management regimes appropriately manage the potential biosecurity effects of vessels dumping at the Northern Disposal Area.
12. Condition 24 I am aware the applicant has proffered Condition 24 establishing a 'NDA Liaison Group' and now proffered Condition 24A establishing a 'NDA Iwi Liaison Group' as *Augier* conditions. I am also aware that Ms Undorf – Lay for Sanford Limited has also sought the establishment of a Technical Liaison Group. I consider imposition of a conditions requiring the establishment of liaison groups, identifying the invitees, and setting out the purpose of the groups, are appropriate. However, I consider any further conditions requiring the establishment of a liaison group that may be imposed by the Committee, must be in accordance with s.63 of the EEZ Act (that is, considered appropriate to deal with any adverse effects, on the environment or on any existing interests (as defined by s4 of the Act)).
13. Condition 25 All the planning experts have now agreed with the recommendation in my Conditions Report (and with recommendation of Mr Riddell) that a review condition (pursuant to sections 76 and 77 of the EEZ Act) is appropriate. I can advise that there have been various iterations of the proposed wording of the 'review condition' between the planning experts, however due to time constraints, the exact wording has not been refined and agreed (as noted in proposed Condition 25, dated 3 December 2018). However, I can confirm that in my opinion, the review condition should be expressed generally in the manner referred to in proposed Condition 25A, Appendix 3 of my

¹ MMR – Marine Management Regime as defined in section 7 of the EEZ Act

Conditions Report. Further I consider the review condition should refer to the purpose of the condition, being to provide for revision or updating of proposed Schedules 2 to 7, including (but not limited to), updating or imposing additional Primary Contaminants and / or trigger values in Schedule 7.

14. Schedules 1 to 7 – The Planners Joint Witness Statement all agreed the Schedules form part of the consent and importantly are to be treated in the same manner as conditions. Therefore, I consider the key principles of best practice in developing consent conditions should equally be applied to the schedules. This includes certainty and clarity about what is required in the conditions and schedules. Further that the schedules (like conditions) should not result in any future reservation of power to the EPA or require the EPA to arbitrate on (or determine) matters at some later date.
15. In summary, I consider at this time, that the schedules that are proposed are appropriate in principle. However, I consider a full review of the schedules is still required (including by the technical experts) to ensure that they adhere to these key principles of best practice in the drafting of conditions. By way of example, I consider the inclusion of uncertain wording such as *‘the application of an appropriate dilution factor’*² or that *“Appropriate decontamination procedures must be followed”*³ do not meet best practice in the drafting of conditions.
16. I recognise that the technical details of the conditions and schedules is beyond my area of expertise. My following comments are therefore provided for the information of the Decision Making Committee only. I wish to advise that at the time of writing this summary statement, I am aware the technical experts were still discussing some details in the methodologies described in the Schedules (dated 3 December 2018). Further I have been advised by Dr Leduc of NIWA (for the Decision-making Committee) (by emails dated 3 December 2018) that he disagrees with some matters in the proposed schedules in particular Schedule 6 (dated 3 December 2018) regarding the use of the gravity corer for obtaining benthic biota samples and the sampling methodology of the benthic biota foraminiferans (*forams*). Further Dr Leduc has suggested some further amendments to proposed Condition 5 regarding the expression of statistical significance, that I understand have not been incorporated into

² Refer Level 3 Investigation in Schedule 3

³ Refer Level 2 Investigation in Schedule 2

proposed Condition 5 (as dated 3 December 2018).

17. Thank you for the opportunity to provide this summary statement. I am happy to answer any questions that may assist the Committee.

A handwritten signature in blue ink, appearing to read 'C. Clarke', with a long horizontal flourish extending to the right.

Catherine Clarke

Planning Consultant for the Decision Making Committee

Dated 3/12/2018